

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | | |
|----------------------------------|---|--------------------|
| ORVILLE EDWARDS, | : | X |
| | : | |
| Petitioner. | : | 05 CV 5288 (ARR) |
| | : | |
| -against- | : | <u>NOT FOR</u> |
| | : | <u>PUBLICATION</u> |
| | : | |
| ELLIOT SPITZER, | : | <u>ORDER</u> |
| New York State Attorney General, | : | |
| | : | |
| and | : | |
| | : | |
| SUPERINTENDENT BRIAN FISCHER, | : | |
| Sing Sing Correctional Facility, | : | |
| | : | |
| Respondents. | : | |
| | : | |

ROSS, United States District Judge:

Petitioner Orville Edwards (“Mr. Edwards” or “petitioner”) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on November 9, 2005. By order dated December 5, 2005, the court directed respondent to show cause why habeas relief should not be granted to petitioner. For the reasons below, the court vacates the order to show cause dated December 5, 2005, and instead directs petitioner to show cause why the court should not dismiss his petition as time-barred by the one-year statute of limitations under 28 U.S.C. § 2244(d)(1) and to supplement his petition with facts that support his grounds for habeas relief .

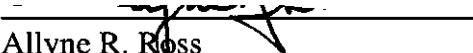
Upon further review of Mr. Edwards’ petition, the court concludes that it prematurely issued an order to show cause to respondent because (1) the instant petition appears to be untimely and (2) the form of the petition fails to comply with Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner has not established that his petition is timely pursuant to the one-year statute of limitations under 28 U.S.C. § 2244(d)(1).

According to his petition, the Court of Appeals denied leave to appeal on June 19, 2002. His conviction became final ninety days later, on approximately September 17, 2002. His petition indicates that he filed a Section 440 motion in state court, but fails to provide the dates on which petitioner filed the motion and the court denied the motion. Absent such information, the court is unable to determine how much time, if any, was excluded from the calculation of the one-year limitation period pursuant to 28 U.S.C. § 2244(d)(2). Thus, it is unclear whether the petition has been filed in a timely manner.

In addition, Mr. Edwards' petition is deficient under Rule 2(c) of the Rules Governing Section 2254 Cases for failing to provide facts to support his only ground for habeas relief, ineffective assistance of trial counsel.

The court hereby (1) vacates the order to show cause dated December 5, 2005 and (2) directs petitioner to show cause by written affirmation, within thirty (30) days from entry of this order, why the court should not dismiss his petition as time-barred by the one-year statute of limitations under 28 U.S.C. § 2244(d)(1). If the petition is not time-barred, the court also directs petitioner to supplement his petition with facts that support his grounds for habeas relief within the thirty (30) day deadline specified above. No answer shall be required at this time and all further proceedings shall be stayed for thirty (30) days. If petitioner fails to comply with this order within the time allowed, the instant petition shall be dismissed as time-barred under 28 U.S.C. § 2244(d)(1).

SO ORDERED.


Allyne R. Ross
United States District Judge

Dated: December 12, 2005
Brooklyn, New York

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